

Congress of the United States

Washington, DC 20515

December 17, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Attorney General Merrick Garland,

This past June you gave remarks on the first National Strategy for Countering Domestic Terrorism and spoke about the efforts to prevent similar attacks and to affirm the “values on which our justice system depends.” Particularly after the events of January 6th, we know that this work is critical to maintaining our democratic norms and to preventing domestic terror. At the same time, we must draw attention to an equally troubling issue: the weaponization of prosecutorial tactics, like the domestic terrorism enhancement, that harm Black and Brown Americans disproportionately.

The country has seen a rise in acts of domestic terror, particularly against minority communities. On the surface, the pursuit of justice in such cases should seem straightforward. The Department of Justice pursues domestic terrorism enhancements on offenses that meet the statutory definition laid out in 18 U.S.C. § 2331(5): acts within the United States that are dangerous to human life, violate the laws of the U.S. or a state, and “appear to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.” While this definition allows prosecutors to seek enhanced punishments against veritable acts of terror, it also often enables prosecutors to pursue domestic terrorism enhancements against defendants whose more minor offenses, like the destruction of property or disorderly conduct, would be otherwise considered far less egregious. We believe that the broad guidelines create a loophole for weaponization of domestic terrorism enhancement that disparately affects minority communities.

Under the previous administration, the DOJ wavered on bringing federal charges against far-right protestors in places like Charlottesville, Seattle, Sacramento, and Anaheim, even after the events in Charlottesville resulted in the death of a counter-protestor. By contrast, federal prosecutors did not hesitate to pursue over 200 felony conspiracy cases against protestors at a January 20, 2017 protest, “where some in the crowd broke store windows and set a limousine on fire.”^[1] This trend is not simply historical. Minorities suffer far more severe penalties, like lifetime imprisonment, for crimes for which white offenders receive a minimal sentence.

For example, clear abuse of this enhancement is evident in the prosecution of Colinford Mattis and Urooj Rahman, two Brooklyn-based lawyers, one Black and one Muslim, who participated in the Black Lives Matter protests last June. Rahman threw a Molotov cocktail at an unoccupied police vehicle. The act injured no one and the two have no previous records, yet the prosecution decided to pursue the domestic terrorism enhancement. At the same time, the world just witnessed Kyle Rittenhouse, who asserted he was justified in killing unarmed Americans with deadly weapon that he did not legally own. Rittenhouse, nor other defendants in similar vigilante cases, are not currently facing domestic terror enhancements. Dylann Roof, who killed nine people in a historically Black church, also did not face these charges. These acts constitute domestic terrorism under 18 U.S.C. § 2331(5). The double standard is self-evident.

This dichotomy is even more conspicuous when we consider that only two of the hundreds of January 6th insurrectionists have faced such an enhancement, though we have clear, videotaped evidence of assault of the Capitol and multiple officers of the law. These acts were directly in line with the statutory definitions of domestic terrorism and were clearly intended to influence government conduct by intimidation or coercion, meaning that the enhancement could be applied to even non-terrorism offenses.

These examples represent only a fraction of the ways in which our justice system is used toward unjust ends. Broad characterizations of minorities' characters, backgrounds, opinions, and beliefs are assumed as tantamount to evidence, often conferring guilt rather than presuming innocence. For Noor Salman, the widow of the Pulse nightclub shooter, these false characterizations landed her in prison for over a year, separating from her child, before she was acquitted of providing material support to a terrorist organization. The clear lack of due process is an appalling violation of human rights, as well as of our own Constitution.

The Department of Justice must take immediate, actionable steps to alleviate the cruel and unusual effect of domestic terror enhancements on minority populations. To accomplish this, we recommend that the Department:

1. Assess the cases in progress, the facts of those cases, and the prosecutors and judges overseeing those cases. The DOJ must seek to thwart discriminatory prosecutorial tactics, as well as partial judgments, that violate basic human rights and that pursue excessively severe punishments for the predicate offenses.
2. Begin tracking and reporting clear data on all cases for which terrorism enhancements are sought, including the publication of docket numbers to link prosecutions to actual cases, providing the demographics and facts of each case, and assessing these cases for discrimination. We also request that the DOJ transmit this data to Congress and make this data available to the public.
3. Carry out stronger analysis and oversight of its sentencing guidelines and how they are leveraged in order to ensure that these guidelines do not create loopholes for abuse, weaponization, dual use, or subversion.
4. Develop and implement stronger diversity and inclusion programs, including conscious and unconscious bias training, for its employees, federal prosecutors, and judges. Create methodologies to promote more women and Americans from diverse backgrounds.

In seeking justice, we must continue to be alert to how tools and strategies can often be weaponized disproportionately against minorities, particularly Black and Brown communities. We must seek to create stricter guidelines and stronger oversight for prosecution. These issues must be addressed with the greatest urgency. We look forward to working with you and your Department to develop and implement processes to protect Americans against the weaponization of these and other prosecutorial tactics. We look forward to your response.

Sincerely,



BONNIE WATSON COLEMAN
Member of Congress



RASHIDA TLAIB
Member of Congress



DWIGHT EVANS
Member of Congress



SETH MOULTON
Member of Congress

^[1] German, Michael and Sara Robinson, "Wrong Priorities on Fighting Terrorism," Brennan Center for Justice, New York University School of Law, https://www.brennancenter.org/sites/default/files/2019-08/Report_Wrong_Priorities_Terrorism.pdf